



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2004

Ms. Carrie Galatas  
General Counsel  
Conroe Independent School District  
3205 West Davis  
Conroe, Texas 77304-2098

OR2004-4599

Dear Ms. Galatas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 203435.

The Conroe Independent School District (the "district") received a request for copies of algebra exams taken by the child of the requestor. You claim that the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.<sup>1</sup>

We begin by noting that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "Education records" are those

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

Under FERPA, a student's parents or guardians have an affirmative right of access to their child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3 ("parent" includes legal guardian of student). As the requestor here is the parent of the child at issue, the requestor has a right of access to the submitted records under FERPA. In the event of a conflict between FERPA and chapter 552 of the Government Code, the federal law prevails. *See* Gov't Code § 552.026; Open Records Decision No. 634 (1995). Thus, the submitted information is not excepted from disclosure under section 552.122 of the Government Code.

Under FERPA, parents and guardians have "the right to inspect and review the education records of their children." 20 U.S.C. § 1232g(a)(1)(A). FERPA also requires an educational agency or institution to respond to reasonable requests for explanations and interpretations of education records. *See* 34 C.F.R. § 99.10(c). However, FERPA does not entitle a parent to copy an education record to which the parent has a right of access, unless "circumstances effectively prevent the parent ... from exercising the right to inspect and review the student's education records[.]" 34 C.F.R. § 99.10(d); *see* 20 U.S.C. § 1232g(a)(1)(A). You indicate that the district will allow the requestor to inspect and review the educational records of her child that are at issue. As you do not inform us of any circumstances that would effectively prevent the parent from exercising the right to inspect and review the student's education records, and as we are not otherwise aware of any such circumstances, we conclude FERPA does not require the district to produce copies or allow the requestor to make copies of the education records pertaining to her child.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

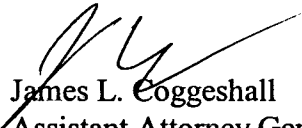
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 203435

Enc. Submitted documents

c: requestor  
(w/o enclosures)